



Report to the Auburn City Council

Action Item
Agenda Item No. 9
City Manager's Approval

To: Honorable Mayor and City Council Members
From: Andy Heath, Administrative Services Director
Michael Colantuono, City Attorney
Date: February 27, 2012
Subject: Mid-Year Informational Report – Citywide Legal Expenses

The Issue

Shall the City Council receive a preliminary report regarding legal expenses consistent with the mid-year budget review?

Conclusions and Recommendations

No Action Requested – Report only.

Background

As a means to update the City Council on the mid-year status of the Fiscal Year 2011-12 budget, staff is currently in the process of reviewing citywide revenue and departmental expenditure budgets. Staff anticipates presenting the full mid-year report to the City Council on March 12, 2012, with recommendations to increase and/or decrease citywide budgeted amounts as appropriate.

The City's Attorney's budget is prepared each year in consultation with the City Attorney using historical data as a benchmark for determining future anticipated costs. Although the retainer charged (and often, discounted) by the City Attorney covers most "everyday" legal needs, at times additional expenditures related to "out-of-scope" issues arise. These out-of-scope issues are typically centered around legal actions, lawsuits or otherwise, initiated by or against the City. Out of scope issues may be handled by the City Attorney, outside legal counsel, or both.

The Fiscal Year 2011-12 General Fund budget for legal services citywide is noted below:

	<u>FY 11-12 Budget</u>	<u>Expenditures to Date</u>
City Attorney	\$ 130,000	\$ 132,535
Litigation Contingency (Outside Counsel)	\$ 25,000	\$ 2,310

Analysis

The incurrence of extraordinary legal costs can vary from year to year, depending on the level of out-of-scope legal activity. As a result, legal services costs are notoriously difficult to budget, because they level of activity frequently turns on issues beyond the City's control – like how often the City is sued, the rate of accidents and other incidents in which there is a need to manage liability risks, and political controversies (like the current charter proposal) which generate demand letters from lawyers retained by participants in policy debates. Legal costs and significant out-of-scope legal issues for the prior three fiscal years and the first six months of the current fiscal year are presented below:

---General Fund Expenditures---				
Fiscal Year	City Attorney	Litigation Contingency	Noted "Out-of-Scope" Issues	Expenditures
2008-09	\$139,060	\$23,893	Fischer Alley Dispute	\$18,609
			Misc. Labor Assistance	\$12,662
			APOA Labor Issues	\$5,241
			Personnel Issues	\$6,987
			Local 39 Labor Issues	\$6,705
2009-10	\$198,927	\$67,748	Fischer Alley Dispute	\$24,598
			Vicious Dog Issue	\$42,667
			Misc. Labor Assistance	\$14,613
			APOA Labor Issues	\$5,682
			Personnel Issues	\$22,338
2010-11	\$116,207	\$21,507	Vicious Dog Issue	\$998
			Misc. Labor Assistance	\$1,876
			APOA Labor Issues	\$23,288
2011-12 (6 months)	\$132,535	\$2,310	Blooms & Blossom Issue	\$28,946
			APOA Labor Issues & Lawsuit	\$34,077

The information above details the types of issues not covered by the legal retainer that might arise over time and, further, provides an indication of those issues that have been ongoing for some time. The higher-than-anticipated level of legal expenditures during the first six months of the current fiscal year can be wholly attributed to two issues – an ongoing labor dispute with the Auburn Police Officers Association and the City's successful effort to shut down an illegal medical marijuana dispensary that opened shop across from the Boys & Girls Club. Given the unpredictability of future legal costs and the City's demonstrated willingness to protect itself at an increased level in times of economic constraint, staff will present to the City Council a revised legal services budget for the balance of the fiscal year during the mid-year presentation.

In the end, however, the City cannot control who sues it, what tactics they use in court, and how costly it will be to protect the City's legal position. For these reasons, it is difficult to predict and budget for the cost of legal services. We can and do, of course, manage costs where we can and keep the Council informed as to the source of the costs and the efforts we are making to control them.

Alternatives Available to Council; Implications of Alternatives

None – Informational Report Only.

Fiscal Impact

None at this time.

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